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IN THE
COURT OF APPEALS OF INDIANA

MICAH PERRYMAN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 20A03-0609-CR-408
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ELKHART SUPERIOR COURT
The Honorable George Biddlecome, Judge
Cause No. 20D03-0305-FA-97

April 9, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Micah Perryman (Perryman), appeals his conviction for possession of cocaine in excess of three grams with intent to deliver, a Class A felony, Ind. Code § 35-48-4-1(b), and possession of marijuana, a Class A misdemeanor, I.C. § 35-48-4-11.

We affirm.

ISSUES

Perryman raises two issues on appeal, which we restate as:

(1) Whether the trial court properly denied Perryman's motion to suppress evidence; and

(2) Whether the State presented sufficient evidence to sustain Perryman's conviction for possession of cocaine in excess of three grams with the intent to deliver.

FACTS AND PROCEDURAL HISTORY[1]

To start, we borrow from the Facts recited in an earlier opinion in this case, *Perryman v. State*, 830 N.E.2d 1005 (Ind. Ct. App. 2005):

> On May 4, 2003, Corporal Brian Schroth of the Elkhart Police Department[, (Corporal Schroth),] supervised a controlled drug buy from a residence at 210 W. Washington St. in Elkhart. Corporal Schroth utilized a confidential informant ("C.I.") who had in the past provided him reliable information. Prior to the buy, the C.I. was searched and given a $20.00 bill that had been photocopied.

[1] We hereby deny Perryman's Verified Motion for Leave to Amend Brief of Appellant, Pro Se, and proceed to review this case using the Briefs submitted by Perryman's counsel.

> Corporal Schroth, the C.I., and another officer arrived at the residence. The C.I. went to the door and Michelle Weekly [(Weekly)] answered. The C.I. asked for a "twenty," [] meaning $20.00 of crack cocaine. Weekly handed Perryman a "bag of rocks." [] Perryman retrieved one rock of cocaine from the bag and handed the rock to the C.I. The C.I. gave Perryman the $20.00 and left the house.
>
> When police searched the C.I., they found only the rock of cocaine. Corporal Schroth obtained a search warrant that was executed the next day. Lieutenant Leif Freehafer [(Lt. Freehafer)] arrived to search Perryman's house and saw Perryman and a white female leave the house and get into a white car. Lt. Freehafer blocked Perryman's car so it could not leave, and shortly thereafter the SWAT team entered the house. Weekly was standing in the middle of the living room, and there was a partially smoked blunt [] in the ashtray.
>
> A search of the house revealed a vent in the basement that did not appear to be connected to heating equipment. Two bags were found in the vent. One contained 35 bags of individually wrapped rocks of crack cocaine totaling 11.36 grams and the other contained ten individually wrapped bags of marijuana totaling 14.92 grams.
>
> A jury found Perryman guilty of possession of cocaine and marijuana.[2] [*See* I.C. §§ 35-48-4-1(b), 35-48-4-11]. At sentencing, the trial court found as aggravating circumstances Perryman's criminal history, his status as a probationer at the time of this offense, and the amount of drugs found in the residence. The trial court declined to place any weight on the mitigating circumstances suggested by Perryman and imposed a sentence of fifty years on the Class A felony and one year on the Class A misdemeanor, which sentences were to run concurrently.

Perryman, 830 N.E.2d at 1007.

On appeal, Perryman argued that the State used improper techniques during jury *voir dire*. Upon review, this court agreed and Perryman's conviction was reversed. *See id*. at 1011.

[2] We note that Perryman was charged with the following: Count I, possession of cocaine in excess of three grams with the intent to deliver, a Class A felony, I.C. § 35-48-4-1(b); Count II, dealing cocaine, a Class B felony, I.C. § 35-48-4-1(a)(1); Count III, maintaining a common nuisance, a Class D felony, I.C. § 35-48-4-13(b)(1); and Count IV, possession of marijuana, a Class A misdemeanor, I.C. § 35-48-4-11. The State later dismissed Counts II and III.

On March 21, 2006, prior to the start of his second trial, Perryman filed a renewed Motion to Suppress, asking that the trial court suppress evidence obtained during the execution of the search warrant at his residence. The trial court had denied a similar motion during the previous proceedings. On March 23, 2006, the trial court held a hearing on the renewed Motion to Suppress, which it subsequently denied on March 27, 2006, the first day of Perryman's second jury trial. On March 28, 2006, Perryman was again found guilty of possession of cocaine in excess of three grams with the intent to deliver, and possession of marijuana. On May 18, 2006, the trial court sentenced Perryman to fifty years in the Department of Correction on the possession of cocaine conviction, and to a one-year concurrent sentence on the possession of marijuana conviction.

Perryman now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Motion to Suppress*

Perryman first argues that the trial court erred in denying his renewed Motion to Suppress. Specifically, Perryman contends that evidence seized from his residence was obtained in violation of I.C. § 35-33-5-2(b).

We review a trial court's ruling on a motion to suppress in a manner similar to claims challenging the sufficiency of the evidence. *Williams v. State*, 745 N.E.2d 241, 244 (Ind. Ct. App. 2001). Thus, in reviewing a trial court's decision on a motion to suppress, we do not reweigh the evidence or judge the credibility of witnesses, but instead determine whether there was substantial evidence of probative value to support

the trial court's ruling. *Id*. However, we note in the instant case that we find it more appropriate to review the issue from the standpoint of whether the trial court abused its discretion in admitting evidence obtained as a result of the search warrant at trial. *See Washington v. State*, 784 N.E.2d 584, 586 (Ind. Ct. App. 2003). Likewise, a trial court has broad discretion in ruling on the admissibility of evidence. *Id*. at 587. Accordingly, we will reverse a trial court's ruling on the admissibility of evidence only when the trial court abused its discretion. *Id*. An abuse of discretion involves a decision that is clearly against the logic and effect of the facts and circumstances before the court. *Id*.

Perryman argues that the trial court abused its discretion by admitting the evidence found pursuant to the search warrant because the search warrant was based upon hearsay. The state and federal constitutions guarantee that a court will not issue a search warrant without probable cause. U.S. Const. Amend. IV; *Redden v. State*, 850 N.E.2d 451, 461 (Ind. Ct. App. 2006), *trans. denied*. "Probable cause to search premises is established when a sufficient basis of fact exists to permit a reasonably prudent person to believe that a search of those premises will uncover evidence of a crime." *Id*. (quoting *Esquerdo v. State*, 640 N.E.2d 1023, 1029 (Ind. 1994)). The decision to issue the warrant should be based on the facts stated in the affidavit and the rational and reasonable inferences drawn therefrom. I.C. § 35-33-5-2; *Redden*, 850 N.E.2d at 461.

Initially, we point out that in the present case, we find no evidence in the record that Perryman objected at trial to the admission of evidence obtained as a result of the search warrant executed at his residence. To avoid waiver of the issue, a contemporaneous objection to the admission of the evidence at trial is required. *See*

Washington, 784 N.E.2d at 586. Waiver notwithstanding, Perryman's hearsay argument also fails on its own accord. We have previously held that an affidavit based on the statements of officers engaged in the investigation and shown to be based upon their actual knowledge, is not deficient, despite its hearsay character. *Redden*, 850 N.E.2d at 461. Our review of the affidavit in this case shows great detail as to the circumstances of the controlled drug buy performed at Perryman's residence, culminating the knowledge of the C.I. and at least three police officers. Therefore, we can find no error in the trial court's decision to admit the evidence obtained as a result of this affidavit.

II. *Sufficiency of the Evidence*

Next, Perryman contends that the State failed to present sufficient evidence that he possessed cocaine in excess of three grams with the intent to deliver. Our standard of review for a sufficiency of the evidence claim is well settled. In reviewing sufficiency of the evidence claims, we will not reweigh the evidence or assess the credibility of the witnesses. *Cox v. State*, 774 N.E.2d 1025, 1028-29 (Ind. Ct. App. 2002). We will consider only the evidence most favorable to the judgment, together with all reasonable and logical inferences to be drawn therefrom. *Alspach v. State*, 775 N.E.2d 209, 210 (Ind. Ct. App. 2001), *trans. denied*. The conviction will be affirmed if there is substantial evidence of probative value to support the conviction of the trier of fact. *Cox*, 774 N.E.2d at 1028-29.

Perryman now asserts he was not in actual possession of more than three grams of cocaine because a majority of the drugs found in his residence were in an air duct, not on his person. We find no merit in this argument. In the absence of actual possession of

drugs, constructive possession may support a conviction for a drug offense. *Donnegan v. State*, 809 N.E.2d 966, 976 (Ind. Ct. App. 2004), *trans. denied*. In order to prove constructive possession, the State must show that the defendant has both (1) the intent to maintain dominion and control, and (2) the capability to maintain dominion and control over the contraband. *Jones v. State*, 807 N.E.2d 58, 65 (Ind. Ct. App. 2004), *trans. denied* (quoting *Goliday v. State*, 708 N.E.2d 4, 6 (Ind. 1999)).

To prove the intent element, the State must show the defendant's knowledge of the presence of the contraband. *Donnegan*, 809 N.E.2d at 976. "This knowledge may be inferred from either the exclusive dominion and control over the premises containing the contraband or, if the control is non-exclusive, evidence of additional circumstances pointing to the defendant's knowledge of the presence of the contraband." Id. These additional circumstances include: (1) incriminating statements made by the defendant; (2) attempted flight or furtive gestures; (3) a drug manufacturing setting; (4) proximity of the defendant to the drugs; (5) drugs in plain view; and (6) location of the drugs in close proximity to items owned by the defendant. *Id*. The capability requirement is met when the State demonstrates that the defendant is able to reduce the controlled substance to his personal possession. *Id*.

Here, we conclude that the record contains more than sufficient evidence that Perryman had constructive possession of the crack cocaine recovered from a vent in his basement during the execution of the search warrant. Even though his possession of the cocaine may not have been exclusive at all times, as the C.I. encountered both Perryman and his girlfriend, Weekly, during the controlled drug buy, the record clearly supports

Perryman's knowledge of the contraband. At trial, the C.I. testified that during the controlled buy, he witnessed Weekly retrieve a large bag of cocaine rocks and then hand the bag to Perryman. Thereafter, the C.I. testified that he observed Perryman extract a $20.00 rock from the bag before directly giving it to him. Thus, there is no question that Perryman exercised control over this amount of crack cocaine. In addition, however, the record shows that following the controlled drug buy and issuance of the search warrant, police officers found nearly twelve grams of crack cocaine in a vent in Perryman's basement. Although not on his person, this crack cocaine was located in a house that Perryman paid rent on, and was separated into thirty-five bags, like the $20.00 bag sold to the C.I. Consequently, despite the fact that Perryman was not caught physically holding more than three grams of cocaine, we conclude that a trier of fact could easily infer that Perryman had knowledge of the presence of the crack cocaine throughout his residence. Accordingly, we hold that the State presented sufficient evidence to convict Perryman of possession of cocaine in excess of three grams with the intent to deliver.

CONCLUSION

Based on the foregoing, we conclude that the trial court properly admitted evidence obtained as a result of the search warrant executed at Perryman's residence. We also conclude that the State presented sufficient evidence that Perryman possessed cocaine in excess of three grams with the intent to deliver.

Affirmed.

KIRSCH, J., and FRIEDLANDER, J., concur.